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Of Counsel

November 30, 2012

By FAX to 202 219 3923

Frankie D. Hampton, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: MUR 6664

Dear Ms. Hampton:

Attached are the Response of Wisconsin Jobs Now!, Inc. and Service Employees International Union to the Complaint and Supplemental Complaint in this matter. Also attached is an unsigned Declaration of Michael Lauer in support of the Response. An executed copy of the Declaration will be submitted as soon as it is received from Mr. Lauer.

Sincerely,



Michael B. Trister

Enclosures

cc: Mark Schneider, Esq.
Michael Lauer

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OFFICE OF GENERAL COUNSEL

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November 30, 2012

By Regular Mail and Fax to 202 219-3923

Anthony Herman, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

OFFICE
2012 DEC 10 PM 2:33
FEDERAL ELECTION COMMISSION

Re: MUR 6664 - Response to Complaint on behalf of Wisconsin Jobs
Now!, Inc. and Service Employees International Union.

Dear Mr. Herman:

Wisconsin Jobs Now!, Inc. ("WJN") and Service Employees International Union ("SEIU") submit this response to the Complaint and Supplemental Complaint in this Matter pursuant to 11 C.F.R. § 111.6(a). For the reasons set forth below, the Commission should take no action with respect to the Complaint and Supplemental Complaint or, in the alternative, should find no reason to believe that WJN and SEIU violated the Federal Election Campaign Act as alleged.

**PAULA ZELLNER PERFORMED NO SERVICES FOR THE WALL CAMPAIGN ON
BEHALF OF WJN OR SEIU.**

The Complaint and Supplemental Complaint allege that WJN and SEIU made in-kind contributions to a federal candidate, Jamie Wall, and his authorized campaign committee, Wall for Congress Committee, (collectively the "Wall Campaign"), because a WJN employee, Paula Zellner, provided services as the campaign manager for the Wall Campaign. The Complaint and Supplemental Complaint are without any merit because, in point of fact, Ms. Zellner provided no services to the Wall Campaign on behalf of WJN, and the complainant's contrary allegations are based on misinformation that is easily explained.

Ms. Zellner worked for WJN from May 2011 until March 2012. She did no work for the Wall Campaign as a WJN or SEIU employee during this period, and did no work for WJN or SEIU after she left WJN on March 4, 2012. Declaration of Michael Lauer ¶ 6 (hereinafter

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"Lauer Decl....") As the political director of WJN, Zellner's primary responsibilities included arranging events and other educational activities concerning issues of concern to working families and serving as a liason between the organization and elected officials in Wisconsin. Lauer Decl. ¶ 5. Throughout this entire period, Ms. Zellner reported to Michael Lauer, WJN's Executive Director, who states unequivocally that she performed no services on behalf of WJN for the Wall Campaign. Lauer Decl. ¶ 6. Indeed, Mr. Lauer states that until Ms. Zellner told him in February 2012 that she was leaving WJN to take a job with the Wall Campaign, he does not recall that she ever mentioned Jamie Wall or the Wall Campaign to him personally or to anyone else while in his presence. *Id.* Mr. Lauer has moreover confirmed these facts with a number of other WJN employees who if examined would also state that Ms. Zellner while working for WJN performed no work for the Wall Campaign. Lauer Decl. ¶ 9.

In early February, 2012, Ms. Zellner gave notice to Mr. Lauer that she would be leaving WJN to take a job with the Wall Campaign. This was Mr. Lauer's first indication that Ms. Zellner had any relationship with the Wall Campaign. Lauer Decl. ¶ 6. Mr. Lauer immediately took steps to ensure that Ms. Zellner would no longer participate in any WJN activities that would have any possible impact on the Wall race, including prohibiting Ms. Zellner from participating in strategy meetings regarding the race in that Congressional District. Lauer Decl. ¶ 7. Ms. Zellner remained at WJN solely in order to complete her on-going projects, including a training conference for WJN's staff and volunteers, called the 99% Summit, for which she was primarily responsible and which was scheduled for early March. *Id.* She was taken off of the WJN payroll effective March 5, 2012. Lauer Decl. ¶ 7 and Exh. A.

The Complaint and Supplemental Complaint fail to describe *any* specific services provided by Ms. Zellner to the Wall Campaign while she was employed by WJN. Instead, they rely on certain limited and circumstantial evidence allegedly showing that Ms. Zellner must have been working for the Wall Campaign at the same time as she was being paid by WJN. As demonstrated by Mr. Lauer's Declaration, however, this conclusion is totally incorrect, and the evidence cited in the Complaint and Supplemental Complaint, when properly understood, does not support any such conclusion.

First, the Complaint cites Wall Campaign press releases allegedly from October 2011 and early 2012 (Exhibits 9-10) which reference Ms. Zellner as the contact person for the campaign. According to the response filed by the Wall Campaign and Ms. Zellner, however, the versions of these press releases attached to the Complaint were erroneously taken from the campaign's *updated* website and had been modified retroactively to include her name only after she joined the campaign in March 2012. The original versions of the press releases included in the Wall Campaign's response did not include her name at all. See Letter from Michael S. Maistelman, Esq. to FEC dated November 19, 2012, Exh. D.

Second, the Complaint cites an FEC report filed by the Wall Campaign which allegedly

shows that Ms. Zellner listed her employer as the Wall Campaign when she made a personal contribution to the campaign on October 3, 2011. Complaint, Exh. 8. Here too, the Wall Campaign's response to the FEC shows that this allegation is completely erroneous. When the campaign *originally* reported Ms. Zellner's contribution on its 2011 year-end report, it noted "Information Requested" in the field for her employer and occupation. Maistelman Letter, Exh. A. When the campaign amended this report on April 17, 2012, however, it correctly listed her *then-current* employer as the Wall Campaign, *id.*, Exh. B, and this amendment apparently was imported into the copy of the report erroneously cited in the Complaint. Had the Complaint attached the original report, this confusion could have been avoided.¹

Finally, the Complaint cites a disbursement by the Wall Campaign to Ms. Zellner on February 29, 2012 as evidence that Ms. Zellner must have been providing services to the campaign before she left WJN. Complaint Exh. 11. However, according to the response filed on behalf of Ms. Zellner and the Wall Campaign, this disbursement was for her expenses to attend a one-day training program in Washington, D.C.; this hardly shows that she was working for the Wall Campaign while still employed by WJN. The small amount of the disbursement (\$284.00) and the fact that it is described in the FEC report as a "reimbursement" not as "payroll" support this statement.

WJN AND SEIU DID NOT ENGAGE IN COORDINATED COMMUNICATIONS WITH THE WALL CAMPAIGN.

The Complaint also suggests that WJN and SEIU may have coordinated their activities with the Wall Campaign through Paula Zellner and asks that "further investigation" be conducted to determine whether this was the case. Complaint, page 3 of 5 ("...serious and legitimate questions also arise over potential illegal coordination between the two groups.") However, the Complaint and Supplemental Complaint fail to identify any specific communications of WJN that may have been coordinated with the Wall Campaign, through Paul Zellner or otherwise. The absence of such allegations make it impossible for WJN and SEIU to respond to the

¹ The Complaint also cites reports filed by two state candidates listing contributions made by Ms. Zellner. The first of these reports correctly shows her employer at the time she made the contribution on October 2, 2011 as WJN. Complaint, Exh. 5. A second state contribution report for a contribution made on May 5, 2012 similarly lists Ms. Zellner's employer as WJN. *Id.* It is unclear why this report erroneously listed her occupation at that time, but any suggestion that this shows she was working for WJN at that time, as alleged by complainant, is easily refuted by the contrary documentary evidence provided by Mr. Lauer. Specifically, Mr. Lauer's Declaration includes a copy of a memo from him taking Zellner off of the WJN payroll effective March 5, 2012. Lauer Decl. ¶ 7 and Exh. A. The Wall Campaign's own FEC reports, which show her on the campaign's payroll beginning prior to April 1, 2012, confirm this evidence as well. Complaint, Exh. 12.

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Complaint because neither the content of the alleged communications nor the nature of the coordinated conduct is specified. See 11 C.F.R. § 109.21. This aspect of the complaint must therefore be dismissed for failure to comply with FEC regulations. See 11 C.F.R. § 111.4(d)(3) (complaint should contain a clear and concise recitation of the facts which describe a violation. Furthermore, as Mr. Lauer's Declaration makes clear, WJN did not engage in any express advocacy communications or their functional equivalent relating to the Wall Campaign during the period in which Ms. Zellner was employed by WJN, and so there is no possible way that the content prong of the regulation could have been met.

For all of these reasons, the Commission should take no action with respect to the Complaint and Supplemental Complaint or, in the alternative, should find no reason to believe that WJN and SEIU violated the Federal Election Campaign Act as alleged.

Sincerely,



Michael B. Trister

cc: Mark Schneider, Esq.

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